

**Before The
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
)	
Revision of the Commission's Rules To)	CC Docket 94-102
Ensure Compatibility With Enhanced 911)	
(E911) Emergency Calling Systems)	
)	

To: Wireless Telecommunications Bureau

**REQUEST FOR A LIMITED WAIVER AND EXTENSION
OF THE COMMISSION'S PHASE II E911 RULES**

Virginia Cellular LLC, Inc. dba Cellular One, ("VA Cellular"), by counsel and pursuant to 47 C.F.R. § 1.925, hereby requests a limited waiver and extension of the 47 C.F.R. § 20.18(g)(1)(v) Phase II enhanced 911 (E911) requirement that Tier III carriers achieve a location-capable handset penetration rate among its subscribers of at least 95% by December 31, 2005 ("95% subscriber penetration requirement").¹

As set forth below, enforcement of the 95% subscriber penetration requirement to VA Cellular would not serve the underlying purpose of the rule. Further, it would ignore the unique facts and circumstances involving VA Cellular's service area. As such, grant of the limited waiver and extension request would serve the public interest. In addition, as set forth in Section 106(a) of the Act, the Commission is to grant a waiver to Tier III carriers "if strict enforcement of the 95% subscriber penetration requirement would result

² Revisions of Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 940192, *Order to Stay* (rel. July 26, 2002).

in consumers having decreased access to emergency services.”² Here, that would be the case.

I. BACKGROUND

VA Cellular provides wireless service in rural Virginia. It holds a CMRS license, Call Sign KNKN714 that is subject to this request, and operates a CDMA network. As described more fully below, VA Cellular has deployed a “handset-based” E911 solution throughout its wireless network.

II. RELIEF SOUGHT

VA Cellular requests a waiver of 47 CFR § 20.18(g)(1)(v) and a 18 month extension (or until June 30, 2007) of the requirement that Tier III carriers must achieve a penetration rate for location-capable handsets among its subscribers of at least 95% by December 31, 2005.

III. E911 PHASE II COMPLIANCE TO DATE

VA Cellular commenced selling and activating location-capable handsets in July, 2003 and only sells location-capable handsets, as required by the Commission’s rules. With respect to the 95% subscriber penetration requirement here at issue, as of the date of this filing, a minimum of 66% of VA Cellular’s subscribers are already using location-

² In December 2004, Congress enacted the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004 (*ENHANCE 911 Act*). The *ENHANCE 911 Act* directed the Commission to grant qualified Tier III carriers’ requests for relief of the December 31, 2005 ninety-five percent penetration deadline for location-capable handsets, as set forth in Section 20.18(g)(1)(v) of the Commission’s Rules, if “strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services.”

capable handsets. Thus, VA Cellular has made substantial strides toward increasing the percentage of location-capable handsets among its subscribers since July, 2003.

IV. Waiver Standard

A waiver is appropriate whenever special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.³ The Commission has established standards to be used when acting upon requests for a waiver of E911 deadlines and obligations.⁴ The Commission has held that it will grant waiver requests that are specific, focused, and limited in scope, with a clear path to full compliance.⁵ Further, the Commission has stated that carriers should undertake concrete steps necessary to come as close as possible to full compliance and should document their efforts aimed at compliance in support of any waiver request.⁶ As set forth below, VA Cellular meets the Commission's standards and that the circumstances underlying the request, in sum, present a special case that justifies a limited E911 Phase II waiver and extension.

V. A WAIVER IS NECESSARY TO SERVE THE PUBLIC INTEREST

A. Public Safety Answering Point (PSAP) Requests

Harrisonburg City/Rockingham County, Waynesboro City, Augusta and Nelson counties have requested Phase II service. VA Cellular has fulfilled Phase II compliance and is operational for Harrisonburg City, Waynesboro City, Rockingham and Augusta

³ 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D. C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D. C. Cir. 1969)).

⁴ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, 17457-58, paras. 43-44 (2000) (*E911 Fourth Memorandum Opinion and Order*).

⁵ *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd at 17458, para. 44.

⁶ *Id.*

counties and is waiting for Nelson County to complete their work to have Phase II operational. None of the PSAP's have opposed VA Cellular's request and several letters of support are attached (see attached letters of support set forth as Exhibit 1).⁷

B. Commitment and Path to Achieving Compliance

As demonstrated by the substantial increase in location-capable handsets among its subscribers since July, 2003, VA Cellular is, and has been, committed to moving toward the 95% subscriber penetration requirement (VA Cellular has been averaging over 800 upgrades per month to location-capable handsets; predominately involving its existing digital subscribers). VA Cellular has selected Intrado as its E911 services and ALI database provider. It has also ensured that all new handsets sold and activated are location-capable.

VA Cellular believes it will be able to meet the 95% subscriber penetration requirement by June 30, 2007. In addition, the impending analog sunset will likely provide an incentive for customers to upgrade their handsets. However, until VA Cellular is able to build out its digital network to the extent that it would provide the same coverage as its analog service in rural parts of its service area, VA Cellular will have difficulty converting those analog subscribers to location-capable handsets. This is true even if VA Cellular offers a substantial rebate on location-capable handsets in order to entice analog subscribers to transition to digital (VA Cellular has already provided in excess of \$50,000 in replacement credits to convert analog subscribers to digital). Virginia Cellular also significantly discounts equipment pricing for new and existing customers. Finally, VA Cellular anticipates that about 75 percent of its subscribers will

⁷ It is noted that Harrisonburg City and Rockingham are included in the same PSAP.

have location-capable handsets by December 31, 2005 and about 85 percent by December 31, 2006. Nonetheless, it expects conversion of the remaining subscribers to be a slower process due to the various factors described herein.

C. Extenuating Circumstances Cause Rigid Enforcement of Section 20.18(g)(1)(v) To Be Contrary To The Public Interest

VA Cellular has faced considerable difficulty in converting its existing analog customers to location-capable handsets. The root of this problem is, in considerable part, the high level of service provided by VA Cellular. VA Cellular's service area is predominately rural in which existing handsets provide them with exceptional coverage. Specifically, a number of VA Cellular's customers use 3 watt analog "bag phones". Their transmitting power provides for superior coverage in rural areas, which simply cannot be duplicated by E911 compliant digital handsets. In VA Cellular's experience, 3 watt analog phone users believe they are safer because the analog phones provide access to 911 service in many areas where a digital handset, even if E911 compliant, would be unable to complete a 911 call. Thus, these customers have a strong disincentive to upgrade to a location-capable handset. In order to speed up the conversion process, VA Cellular has, and will continue to, offer incentive programs to entice handset upgrades. VA Cellular anticipates that conversion of its existing customers will be a slow process, but will pick up as it expands digital service throughout its licensed service area. Specifically, VA Cellular anticipates meeting the 95% subscriber penetration rate by June 30, 2007.

D. Strict Enforcement of the 95% Subscriber Penetration Rule Would Result in Consumers Having Decreased Access to Emergency Services

Strict enforcement of the 95% subscriber penetration rule would most likely force VA Cellular to expend unnecessary resources in order to merely satisfy the Commission's rules. Currently, VA Cellular's analog customers have the ability to dial "911" in rural areas of Virginia. Strict enforcement of the 95% subscriber penetration rule would prevent that customer from obtaining emergency services (such as the ability to dial "911") because, if forced to transition analog subscribers to digital handsets, VA Cellular would not be capable of duplicating that same coverage for its digital network by December 31, 2005 that it currently provides with its analog network. At this time, there is not a business incentive to first concentrate on providing equivalent digital coverage in certain parts of its licensed area (achieving such a result would require additional cell sites to those currently in place for its analog network). Rather, VA Cellular's focus is on upgrading its digital network in other parts of its licensed area that would ultimately provide for better and more expansive wireless service instead of having to expend additional resources on upgrading its handsets; specifically those analog subscribers that are presently receiving exceptional service. If forced to comply with the 95% subscriber penetration rule, the end result will be a system whereby consumers have "decreased access to emergency services"; especially in rural and remote areas of VA Cellular's service area.

VI. Conclusion

Based on the foregoing reasons, grant of a limited waiver of the Commission's

Phase II E911 rules will serve the public interest.

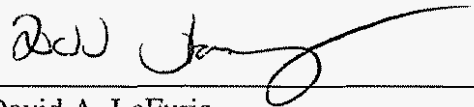
<p>Lukas, Nace, Gutierrez & Sachs, Chartered 1650 Tysons Boulevard, Suite 1500 McLean, VA 22102 703-584-8678</p> <p>November 15, 2005</p>	<p>Respectfully submitted,</p> <p>VIRGINIA CELLULAR LLC</p> <p></p> <hr/> <p>David A. LaFuria Todd Slamowitz</p> <p><i>Its Attorneys</i></p>
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EXHIBIT 1



Voice: (540) 434-4436

101 North Main Street, 5th floor
Harrisonburg, VA 22802

fax: (540) 434-2512

November 2, 2005

Ms. Laura Stickley
Virginia Cellular
PO Box 1005
Staunton, VA 24402

Dear Laura:

Based on your request for extending the deadline for 95% phase 2 compatible phones, I will agree to an extension of June 30, 2007 for Virginia Cellular to comply with the 95% phase 2 capable phones deployed. I look forward to hearing monthly updates from you no later than the 5th working day of each calendar month regarding your project to include the current percentage of phones that are phase 2 compliant. I ask that you being these monthly updates in January, 2006. As in the past, I feel it important that we remain in close contact and you making this effort puts me much more at ease that definitive progress is being made.

Sincerely,

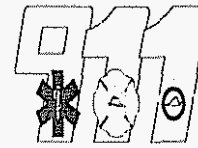
Jim Jenkins
Director



18 Government Center Lane
P O Box 590
Verona, VA 24482-0590

COUNTY OF AUGUSTA
EMERGENCY OPERATION CENTER

November 2, 2005



Donna J. Good
Director
(540) 245-5503
Fax (540) 245-5506
dgood@co.augusta.va.us

Laura Stickley
121 S. Augusta St
Staunton, VA 24401.

I write to you regarding your request for waiver of the Federal Communication Commission's (FCC) limited waiver and extension of 47 C.F.R. § 20.18(g)(1)(v) Phase II enhanced 911 (E911) requirement that Tier III carriers, such as Virginia Cellular, LLC, achieve a location-capable handset penetration rate among its subscribers of at least 95% by December 31, 2005.

As an initial matter, we appreciate your current ability to deliver Phase II information to us with respect to your customers that already have location-capable handsets.

In addition, we understand the difficulties you face as you transition your remaining customers to location-capable handsets. Specifically, those customers that continue to operate on your analog network.

As a result, I will agree to an extension of June 30, 2007 for Virginia Cellular to comply with the 95% phase 2 capable phones deployed. I also look forward to hearing monthly updates from you no later than the 5th working day of each calendar month regarding your project to include the current percentage of phones that are phase 2 compliant. As in the past, I feel it important that we remain in close contact and you making this effort puts me much more at ease that definitive progress is being made.

Good luck on your project and we look forward to working with respect to Phase II E911 service in our County.

Sincerely,

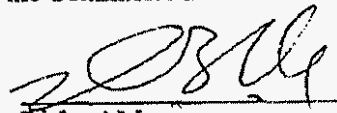
Donna J. Good

Donna J. Good
EOC Director

DECLARATION OF RICHARD MORROW

I, Richard Morrow, declare under penalty of perjury that the foregoing is true and correct.

1. I am the Vice-President of Virginia Cellular, LLC, dba Cellular One.
2. I am familiar with the facts contained in the foregoing "Request for Limited Waiver and Extension of the Commission's Phase II E911 Rules", and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts which are subject to official notice by the Commission.


Richard Morrow